

Bd. of Trustees of Laborers Health & Welfare Tr. Fund v. Doctors Med. Ctr. of Modesto, Inc., 07-16710

SEP 14 2009
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

TALLMAN, Circuit Judge, dissenting:

I respectfully disagree with the majority's conclusion that federal subject matter jurisdiction is lacking. This is nothing more than a dispute over medical necessity for an extra day of hospitalization—a typical claim for benefits due under an ERISA plan covering the patient. I believe that the underlying dispute falls squarely within the test articulated by the Supreme Court in *Aetna Health Inc. v. Davila*, 542 U.S. 200 (2004), and would conclude that the Hospital's claims are subject to complete preemption under § 502(a)(1)(B) of the Employee Retirement Income Security Act, 29 U.S.C. § 1132(a)(1)(B). Therefore, I dissent.